



THE SENTINEL

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Disaster **Preparedness**

The massive dislocations of people and businesses following 2005's Hurricane Katrina was a powerful illustration of the need for firms to have disaster preparedness plans in place and for regulators to be prepared to facilitate efforts by firms to continue providing services to customers who may be temporarily living in other states. Is your office prepared?

Preparedness plans need to provide for contingencies as diverse as terrorist attacks on financial centers to large-scale sicknesses resulting from avian flu (including health agency-imposed restrictions on travel and large gatherings of people).

Fortunately, actions are being taken by industry leaders and regulators to address some of the concerns. The SEC, FINRA, and state securities regulators are working with the securities industry to develop a plan to help customers access their funds and to help firms serve customers in

times of large scale disruptions. While large firms generally have contingency plans in place and customer account information would still be available to them, small firms and independent contractor offices may not be as prepared.

The Small Firm Emergency Partner Program being developed by regulators and industry would permit small firms to partner with other firms to assist if a disaster occurs and to provide services to customers, including giving the customers access to funds or securities held in brokerage accounts. To the extent needed, regulators would temporarily waive licensing requirements so customers' needs can be met, even if the customers are located in states where the agent handling the emergency transaction is not licensed. On October 11, FINRA announced the availability of a template for firms to use when drafting a partnership agreement and more detailed information about this program. The web site is www.finra.org/sfepp

Separately, firms and regulators are working together to prepare for problems that might arise in the event of an outbreak of avian flu. In late September and early October, federal financial regulators (The Financial and Banking Infrastructure Committee) sponsored an exercise in which banks and securities firms would test how they would cope with the absence of large numbers of employees. SIFMA and many of its members joined in this exercise which began on September 24 and ended on October 12. The results are expected to be announced in the coming months. The SIFMA web site at www.sifma.org has several helpful pages on preparing for a pandemic.

Nevertheless, there are steps that each office should take. Each licensee and each office should develop plans to ensure it can help its employees and customers during a disaster and that essential records are not only protected from destruction, but are accessible. With the availability of low-cost imaging of records and remote access to electronic files, there are some relatively simple actions that can be taken to help you be prepared for such an event.

Please think about how you can be more prepared. Training seminars are held by various government, industry, and private groups to help businesses prepare, including the U.S. Department of Homeland Security.

Free Meal Seminars

Congressional hearings held in September highlighted some of the abusive practices used to deceive seniors. At those hearings, state securities regulators, the SEC and FINRA released the results of a joint sweep that focused on free meal seminar abuses. Many of these seminars are at fancy restaurants or country clubs. Among the findings:

- While the seminars were billed as “educational,” every one was a sales presentation.
- 59% of firms had poorly supervised the seminars.
- One-half featured exaggerated or misleading advertising claims.
- 23% appeared to be making unsuitable recommendations, including CMOs and REITs, or recommending the investor borrow money to invest.
- 13% were fraudulent, including serious misrepresentations of risks and sales of fictitious products.
- In 12 of 110 seminars, sales literature failed to identify the firm employing the presenter.
- Seminar presenters often claim to have special skills to help seniors, such as designations that attest to their abilities. Many designations, such as “certified senior adviser,” are merely marketing ploys.

Copies of the 46-page NASAA study can be found at www.nasaa.org.

The problem with the types of misleading sales approaches identified in the regulatory sweep is that the investment products sold often are unsuitable for people in the seminar audience and that the new customers do not understand the nature of the products they purchased. The touchstones for any seminar directed at seniors should be the accuracy of the advertising, the suitability of the products sold, and the quality of disclosures to the attendees.

Not only is it incumbent on agents to avoid conducting seminars in a way that may mislead seniors, but firms need to do a better job of supervising the agents who conduct these types of workshops or seminars.

While the worst negative effects of this type of conduct fall on vulnerable seniors, reputable and honest providers of investment advice also are harmed. Their credibility suffers when seniors are afraid to believe any advice that is offered. This concern has led to a recent increase in referrals to the Division, asking that we investigate certain seminar sponsors.

Readers of this newsletter will recognize that the Division recently has brought several enforcement actions against seminar presenters and their employing firms.

Statistical Information

Licensing Activity	This Quarter	Sept 30 Total
Broker-dealers	36	1720
Broker-dealer agents	6908	81641
Investment advisers (state)	3	182
I.A. representatives	289	2435
Issuer agents	6	87
Filing Activity		YTD
Coordination registration	34	107
Qualification registration	0	1
Mutual funds/UITs	1234	3615
Regulation D filings	322	849
Exemption filings	16	36

Investor Education

Senior Expo

On October 19-20 the Division again hosted a booth at the annual Senior Expo at the South Towne Exposition Center in Sandy. Expo attendees could watch the three television public service announcements the Division has used to educate the public about investment fraud. (Those PSAs can be viewed on the Division's web site: www.securities.utah.gov/forinvestors)

Visitors also were asked to fill out a ten-question survey, testing their knowledge of how to avoid investment fraud. Rulers, containing tips on recognizing and avoiding investment fraud, were distributed. A slide show ran in the background listing maxims for investors. Some of these were:

- Call the Division of Securities to see if the salesperson offering the investment is licensed and if the investment is registered.
- Common Warning Signs: promise of high returns, promise of little or no risk, and saying the investment is "guaranteed."
- Foreign Currencies: if the salesperson says it is a "secret" foreign exchange program, it is a scam.
- If you don't understand the investment – Avoid it.
- Unscrupulous Brokers: Report any brokers who ask to borrow money from you.
- A salesperson's good manners don't indicate personal integrity.

- Mining Investments: When metals/oil prices rise, promoters claim to have new mines/wells or new ways to recover minerals or oil. The mines or wells offered to you will NOT have valuable minerals or oil.
- Prime Bank Schemes: These scams promise double- or triple-digit returns through claimed access to "risk-free high-yield" instruments.
- Investment seminars may offer a free dinner, but remember: there is "never a free lunch."
- Unsuitable Investments: Discuss investments with a trusted relative or friend who has no financial interest in the venture.
- If the investment salesperson is not licensed – Don't buy!
- If you have trouble retrieving your principal or cashing out profits – it's probably a scam.
- Ponzi Schemes: Money from new investors is used to pay earlier investors. Eventually the scam collapses when new "investments" aren't sufficient to cover payments to earlier investors.
- Be suspicious when someone you don't know contacts you offering an investment opportunity.
- Lining the Broker's Pocket: Report any brokers offering investments not being sold by the brokerage firm. Make sure all investments are listed on the account statements from the firm and write checks only to the brokerage firm.
- Even if your broker is licensed, make sure you understand the investments she recommends.
- Foreign Currencies: The many variables affecting currencies make trading in them very risky.
- Carefully review your account forms and monthly statements.
- Unscrupulous Brokers: Report any brokers who guarantee you against loss.
- Promissory Notes: Typically these are issued by unknown or non-existent companies. They often are offered by someone you trust and promise high returns with little or no risk.
- Report misconduct, fraud, or abuse to the Division.
- High Return = High Risk. There are no exceptions!
- Commodities: At least 90% of investors lose money buying commodities. Do you really think you are smarter than professional traders who do this all day, every day?
- There is no such thing as a "no risk" investment."
- Unscrupulous Brokers: Report any brokers who make unauthorized trades in your account.
- Refuse to do business with salespeople who prey on your fears or try to rush your decision.

- Don't be afraid to hang up the phone when someone solicits you for money.
- Advance Fee Schemes: They promise large loans at low rates if you pay an upfront fee – but the loans are never delivered.
- Monitor your investments – always stay in charge of your money.

Staying Sharp Seminars

The Division continues to teach seniors how to avoid investment fraud at AARP's Staying Sharp seminars. Recent seminars have been held in Park City and Ogden. A seminar in Richfield is set for November 10th.

Investor Education Materials Created by the Division May be Shared

Any materials created by the Division to educate licensees or the public are not copyrighted and are in the public domain. Brokers and firms are free to use any of these materials for internal training or to help educate your clients about fraud.

FSI: Fraud Scene Investigator

In August, NASAA and the Newspaper Association of America launched FSI to help teach high-school students how to fight investment fraud. It is an interactive online investor education program that teaches and empowers students how to detect and stop investment fraud. The program, along with a guide for teachers, is available free to educators for use in classrooms and at home.

The FSI program is designed to help students learn how to: understand an investment account statement, examine a company's stock chart and trading activity, research a brokerage company or individual broker, and identify a common investment scam.

In the FSI program, students help uncover a million-dollar fraud in progress and put the mysterious con man, "Mr. X," behind bars. Along the way, students learn how to read stock reports, research companies, and decipher the warning signs of fraudulent sales pitches.

The Division of Securities is working with the Utah Council on Economic Education to introduce the FSI program into Utah classrooms.

We encourage you to try out FSI at www.nasaa.org.

New Variable Annuity Suitability Guidelines

On September 7, 2007, the SEC approved a new rule proposed by FINRA (Rule 2821) to impose suitability standards on the sales of variable annuities. Agents will need to certify that they have explained variable annuity terms to clients and that the sale or replacement is suitable. Supervisors will also be required to affirm the suitability determination.

ENFORCEMENT

Summary Of Actions

Enforcement actions initiated or concluded during the third quarter of 2007 are listed below. Copies of enforcement orders entered by the Division can be found at www.securities.utah.gov.

Remember: in criminal prosecutions, defendants are presumed innocent until proven guilty or until a plea is entered.

JULY

July 3, 2007. **Harold Earl Bushman**, of Orem, consented to an order in which he admitted that he took \$18,375 from three investors in 2006 saying the money would be used to exercise employee stock options from Intel and Sun, when he had never worked for either company. He has already paid restitution to the investors and agreed to cease any further violations and pay a fine. Docket No. SD-07-0030.

July 5, 2007. A federal grand jury indicted **Thomas J. Robbins**, of Fillmore, **Douglas J. Litster** and **Richard Bybee**, of Salt Lake, and **Clair W. Cox**, of Centerville on charges they operated a Ponzi scheme in the guise of a charitable organization to provide education to disadvantaged communities around the world. They are charged with wire fraud, securities fraud, and the sale of unregistered securities. The charges resulted from a joint investigation of the Division, the SEC, and the FBI.

July 9, 2007. **David C. Young**, of South Jordan, admitted that he sold \$128,300 annuity to his mother-in-law, then withdrew \$61,156 from the annuity and used the funds for personal expenses, including the purchase of an ATV. Young agreed to be

barred from the securities industry and will pay a fine of \$75,000. The issuer of the annuity has paid restitution to the victim. Docket No. SD-07-0010.

July 12, 2007. **Selamawit Asres**, a former agent for a defunct New York-based R.D. White and Company, consented to a civil court injunction for her participation in a scheme to defraud Utah clients of R.D. White, including excessive trading, receiving hidden compensation from companies whose stock the agents sold, and conducting business through agents that were not licensed. She will pay a \$5,850 fine and be barred from the industry.

July 16, 2007. An order to show cause was issued against **Brian Arthur Kitts**, of Park City, and his two companies, **NevWest Corp.** and **Brisam Corp.** for telling investors the two companies would go public. He took \$87,000 from seven investors, claiming they would make huge profits. The investor funds were used to pay personal expenses. He did not disclose that he had an unpaid civil judgment and tax lien against him and that one of his companies had declared bankruptcy. Docket No. SD-07-0051.

July 19, 2007. The Utah Attorney General filed criminal charges against **Brian Arthur Kitts** for his conduct in using investor monies to pay his personal expenses. He was charged with 17 counts of securities fraud, theft, and engaging in a pattern of unlawful activity.

July 26, 2007. **Donald Wesley Dennett**, of Washington County, was accused in a Division order to show cause of taking \$16,000 from a disabled veteran for an investment in a Mexican resort hotel. Dennett's company had placed an advertisement in the Cedar City

newspaper offering a 9% guaranteed return on investments. Dennett did not tell the investor that at the time he took the money, Dennett already was the subject of a Division enforcement action, that another of his companies had just filed for bankruptcy, and that a debt collection action had been filed against him. Docket No. SD-07-0052.

July 26, 2007. Criminal charges were filed by the Attorney General against **Joseph Paul Ottis** for taking \$180,000 from a senior citizen, claiming the money would be used to develop a children's television program focusing on preserving the earth and finding missing children. Ottis claimed he was negotiating with Disney and Nickelodeon for the television program. Ottis is charged with securities fraud and exploitation of an elder adult. The victim did recover \$66,278, but is still owed over \$110,000.

AUGUST

Aug. 2, 2007. Default cease and desist orders were entered against **American Mortgage Alliance** and **National Mortgage Alliance** of Salt Lake for taking \$55,000 from three investors. The companies claimed the money would be used to place kiosks in shopping malls to generate leads for mortgage loans and loan refinancings. Investors were promised 20% interest and told there was no risk. \$75,000 in fines were imposed. Docket No. SD-07-0040.

Aug. 2, 2007. The Utah Court of Appeals affirmed the securities fraud conviction of **Renae Reid Bolson** for encouraging investors to take out mortgages on their homes. Investors were told the promoters would pay the investor's mortgage payments and pay high interest. Investors were falsely promised that their funds would be held in escrow at a title company.

Aug. 9, 2007. An order to show cause accused **Warren Kyle Foote**, of Salt Lake, of taking \$80,000 from two investors saying he would use the money to buy lots in a real estate development in Idaho. He claimed several lots were already sold and personally guaranteed 2% interest per month plus 12% of the proceeds from the sale of the lots. The order to show cause alleges he used the money for personal expenses and failed to disclose a bankruptcy and unpaid judgments. Docket No. SD-07-0053.

Aug. 10, 2007. **Corrine McNabb** of Edmonton, Alberta, pleaded guilty to securities fraud. As part of her plea agreement, she paid \$230,000 in restitution and will pay an additional \$10,000 per month toward the total \$11 million restitution amount. She had told investors their money would be invested in the stock market or offshore investments and earn up to 20% per month. \$1.6 million was diverted to personal use. Investors were not told that another promoter had criminal charges pending.

Aug. 13-14, 2007. The district court entered injunctions against **Frank Joseph Santoli**, of Port Washington, NY, and **James Cicalese**, of Stirling, NJ. They were agents of R.D. White & Co., which engaged in improper practices in the brokerage accounts of 23 Utah customers. The firm is now defunct. The injunctions were entered by default. Santoli must pay \$41,379 in restitution and a \$14,000 fine. Cicalese is ordered to disgorge \$13,725 in improper commissions and pay a \$9,000 fine. This case is now concluded against the firm and all 20 brokers and officers in an action commenced in 2000.

Aug. 31, 2007. **Robert Michael Fain**, of Cottonwood Heights, pleaded guilty for his role in fraudulently taking money from investors through two mortgage companies

he owned and through an inkless fingerprint company he owned, called Real-Prints, Inc. When one investor said he did not have money to invest, one of the defendants arranged a second mortgage on the investor's home. Investors were not told about Fain's background, including a conviction in 1996 for securities fraud, a prior bankruptcy, and unpaid judgments. Investors have received some restitution. Sentencing will be on October 26.

SEPTEMBER

Sept. 4, 2007. An order to show cause was issued against **Jared William Bird** for soliciting an investor to put money into a company run by Brian Kitts after Kitts had been charged criminally for securities fraud for taking money for the company. Bird is alleged to have told the investor that the company, NevWest, had gone public, when money from the prior investors had been used for groceries, sports equipment, golf fees, and cash withdrawals. Bird is accused of failing to tell the investor about the criminal charges and other financial problems. Docket No. SD-07-0057.

Sept. 10, 2007. The Utah County Attorney filed criminal charges against **Harold Earl Bushman**, of Orem, for taking \$54,975 from four investors saying the money would be used to exercise employee stock options from Intel and Sun. The investors were neighbors and fellow members of his church congregation. The criminal case includes charges in addition to an administrative order entered against him in July.

Sept. 10, 2007. An order to show cause alleged that **Kevin L. Warner** and six of his companies took \$521,000 from investors in Davis and Weber Counties for fake commodities offers. The order to show cause alleges that he falsely told investors he was licensed to trade commodities,

he had a corner on the grain market, and he had written a book showing how he made money in commodities trading. Some investors were told there was no risk and profits were guaranteed. The six companies named along with Warner are: **SCI Partners, Pro Traders Club, Go 2 Investments, Kevin L. Warner, LLC, Strategic Traders, and Strategic Investors**. The Division alleges some of the money was used to pay personal bills and pay off prior investors. Docket No. SD-07-0065.

Sept. 10, 2007. An order to show cause was issued against **Troy Wesley Dennett**, of Washington County for taking \$838,355 from three southern Utah investors for investment shares in a hotel property in Mexico. Investors were promised a 9% return on their investment plus use of the resort properties. The investors were not told about prior enforcement actions against the company and its officers. Docket No. SD-07-0058.

Sept. 12, 2007. A default order was entered against **Robert Michael Fain**, of Cottonwood Heights, for his role in taking investor funds for two mortgage companies and an inkless fingerprinting business. On August 31, Fain pleaded guilty to criminal charges related to this conduct. Docket No. SD-07-0043.

Sept. 13, 2007. Midway-based **Cash Flow Gurus** and its owner, **David Rhetta Adlard**, were the subject of an order to show cause alleging they took \$120,000 from an investor based on promises the money would be used to develop real estate, but instead using the money for personal expenses. Adlard used "free dinner" seminars to solicit investors. He told these investors they would earn a 24% return, with no risk and that the investment was guaranteed. He also convinced the

investor to borrow \$70,000 from equity in the investors home. He did not disclose a prior bankruptcy and unpaid child support judgments. Docket No. SD-07-0066.

Sept. 14, 2007. **Penny Financial, Inc.** and its two owners, **Perry Penny** and **Terry Penny**, of Gilbert, AZ consented to an order that they cease selling securities without a license. The three admitted that they falsely told investors they could invest 25% of the value of their home (generally using home equity loans) in a high-yield program that would pay off the loan and their entire home mortgage in five years. They told potential investors there was no risk and that the principal amount was guaranteed. The money supposedly would be invested in real estate deals such as apartment conversions in New York and China. Fortunately, their solicitations were unsuccessful; no Utahns invested. They were ordered to pay a fine of \$10,000. Docket No. SD-06-0097.

Sept. 17, 2007. A default order was entered against **Warren Kyle Foote**, of Salt Lake, for taking \$30,000 to develop property in Idaho. A second investor was told her \$50,000 would be used for hard-money lending for real estate. All the money was used to pay Foote's personal expenses. Docket No. SD-07-0053.

Sept. 18, 2007. A consent order was entered against **Glenn Allen Britt**, of Layton, and The Cantamar Group, for selling investment notes tied to real estate. Britt raised \$309,033 from six investors by selling promissory notes with interest rates ranging from 18 to 60%. Investors were neighbors or were solicited through seminars. Investors were encouraged to invest cash from home sales or home equity loans. Britt pleaded guilty to criminal charges in May 2007. Docket No. SD-07-0003.

Sept. 20, 2007. The Utah Attorney General filed felony criminal charges of securities fraud, theft, exploitation of the elderly, and racketeering against **Kevin Larry Warner**, of West Point, for a series of fraudulent commodities investments he sold to nine investors in Davis and Weber Counties. Investments he is alleged to have sold include a participation in fees for all commodities trades to be conducted by his company, ownership interest in a limited liability company, promissory notes, and pooling money for speculating in commodities.

Sept. 21, 2007. **Ronald K. Bassett**, of Lindon, had a default entered against him in federal court in a lawsuit filed by the SEC, CFTC, and the State of Utah. Bassett was a principal in 4NExchange, which claimed to trade commodities. Instead, most of the \$14.7 million taken by the company was used to pay purported profits to the investors, for business expenses, and to pay more than \$500,000 to Bassett and his partner, Paul Grant. A receiver is in the process of liquidating the company to repay investors.

Sept. 24, 2007. The Third District Court entered an order dismissing a lawsuit filed against the Division by **NevWest Corp.** and **Brisam Corp.**, seeking access to the Division's investigative records. The court found it lacked subject matter jurisdiction because the companies failed to exhaust their administrative remedies.

Sept. 25, 2007. **Michael Clarke**, of Salt Lake, and his company, **Diabetes Medical Development Corp.** admitted violating the law by taking \$10,000 from an investor for a diabetes treatment center. Clarke promised the investor a royalty on each diabetes treatment and 15% interest on the promissory note. Clarke had told the investor the company had a \$10 million

loan it would receive within 90 days. Clarke repaid the investor the amount lost plus interest. Docket No. SD-07-0011.

Sept. 28, 2007. Allegations that a nightclub investment was fraudulent were resolved when **Jason King Brent, Investment Capitalists**, and **Ice Nightclub**, of Layton, admitted that they violated the law by taking \$34,450 from two investors for a nightclub they said would open in Salt Lake City. Brent told investors he only needed short-term funds and promised to double their money in 30 days. He also said the investment was guaranteed. Brent and the companies agreed to cease violating the law and will pay to the victims the \$23,350 still owed. They will also pay a \$2,500 fine to the Division. Docket No. SD-07-0048.

Sept. 28, 2007. An order to show cause was issued against **Our Unsung Heroes**, **Paul McSweeney**, of Mapleton, and **Craig Ostlund**, of Draper, for taking money to buy an airplane, claiming the airplane would be used to give flying lessons to earn money. Investors were told that some of the profits would be given to the investor; other profits would be used to send World War II veterans to Washington, D.C. to tour the monuments. Investors were not told that Ostlund had filed for bankruptcy twice and that both Ostlund and McSweeney owed unpaid judgments. Docket No. SD-07-0069.



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